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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
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REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS

Information received from indigenous peoples' and non-governmental organizations

GE.94-13040 (E)

THE TREMEMBÉ MISSION

[Original: French]
[27 April 1994]

A. The geographical and demographic background

1. The Tremembé of Almofala and Varjota occupy a vast area in the municipality of Itarema along the coast in the State of Ceará in north-eastern Brazil. They live in small communities in the area, situated between the Almofala beaches and the far side of the Aracati-Mirim river, a region they still call the mata, which is the local name for forest areas. We know that there are other Tremembé communities either in Itarema or in other coastal municipalities in Ceará, Piauí and Maranhão. They are fishermen and excellent divers.

2. The work done in 1986 during the first visit of a team of technicians from the Fundação Nacional do Indio (National Indian Foundation) (FUNAI) to this indigenous area resulted in a count of 3,061 Tremembé. Since the work did not take account of all the communities in the area, the size of the population who consider themselves Tremembé may be even greater.

B. The "aldeamento" (Indian settlement) and the collective memory and cultural tradition

3. In 1702 Father José Borges de Novais founded a rural mission settlement called "Nossa Senhora da Conceição" (Our Lady of the Immaculate Conception) at Almofala. The Church of the Holy Lady was built there and is a historical point of reference for the Tremembé because it symbolizes their link with the past in this area and with what it represents today. The historical records corroborate the orally transmitted history of the Tremembé.

4. Although their lands have been visited and invaded for 500 years, the Tremembé have succeeded in preserving some of their cultural traditions. One of the most outstanding examples is the Torém dance, which has become typical of the Tremembé culture today and through which they keep alive their links with nature and with their ancestors.

5. Oral history transmits and strengthens the ties which the Tremembé cultivate with the "Land of the Holy Lady" the tribal land where they were born and live.

C. Resistance and the fight for the land

6. The Tremembé have been driven out of their lands over a long period. The year 1950 marked the beginning of the process of modernizing rural areas in Ceará. Ensuing expulsions have been accompanied by a policy of enclosures that fragments the territory, as well as by displacements, causing the Tremembé to lose contact with and control of all their land.

7. In the struggle to protect their rights the Tremembé are inspired by the example of the indigenous community of Varjota, which after bitter fighting remained the only community where the land was managed by the group. They have 389 hectares where they are able to fish, hunt, gather fruit, grow crops (cassava, corn, beans) and rear domestic animals for their daily subsistence.

8. They banded together to resist an agricultural firm, Ducoco S.A., which has been established in the area since 1978 and has taken various steps to evict the community from its land.

9. In the beginning, the Tremembé were backed by the Church Advisory Commission on Land Issues (CAPT). Since 1986 support has come from a group of missionaries - the Tremembé Mission of the Diocese of Itapipoca - who promote the cultural and social stand of the Tremembé and back their assertion of themselves as an ethnic group, despite age-old prejudices against the exercise of their rights.

10. The Tremembé are claiming only a small portion of the 4,900 hectares which they have traditionally occupied, because they realize that they do not have enough resources to withstand the large landowners who have settled on the northern part of their lands. This means that the Tremembé have lost their manques (the area of mangrove swamps, the quagmires or "Tremembé") as well as the "Lagoa Santa" (Holy Pool), which the Tremembé of Almofala regard as their most historic site, since it was the scene of the Tremembé's last stand as late as 1972. The FUNAI team of scientists have erected an archaeological site there which is very important for the history of the community.

11. In Ceará, in the north-east, and nationwide, the Tremembé participate in mobilizing the indigenous people to protect the rights which are theirs under the 1988 Brazilian Constitution, as well as in drafting the new Estatuto do Indio (Indian Statute) and in the campaigns for indigenous solidarity and the delimitation of indigenous land.

12. During the last decade the indigenous movement has grown in Ceará, where for a long time indigenous groups were completely disregarded. Several other groups like the Pitaguary, the Genipapo-Canindé, the Potiguara of Mount Nebo and the Tremembé of Capim-Açu have now joined the Tremembé and Tapeba (who have met the conditions for demarcation of their land) on the road to ethnic identification.

D. The campaign for the demarcation of indigenous land - hope for the future

13. On 4 September 1992 FUNAI Brasilia established a technical working group for the ethnic identification of the Tremembé of Almofala and Varjota and of their territory. Both procedures are necessary for carrying out a demarcation, the administrative part of which is the responsibility of FUNAI. Under the Brazilian Constitution the time-limit for the demarcation expired on 5 October 1993.

14. For centuries, part of the Tremembé population has been dependent on the fazendeiros (large landowners, including a few posseiros, in other words occupants of indigenous land) and the businessmen, who also have political control of the region. This section of the population, driven by hunger and the increasing scarcity of land and resources for survival, took up a position at variance with their own rights and in so doing sided with the landowners and the politicians.

15. FUNAI, meanwhile, adopted the comprehensive findings of the administrative proceedings initiated by its working group (8 July 1993) and ordered their publication in the Diario Oficial of the Union.

16. The Tremembé of Almofala and Varjota are thus officially recognized as an indigenous people on indigenous territory.

17. The reaction was not long in coming: the area's politicians hurriedly sent letters and telegrams to exert pressure on the Ministry of Justice, while in the disputed areas the pressure was more direct, with violence designed to sow panic and confusion. Following that, a despatch from the Minister of Justice on 24 August 1993 yielded to the requests for a review of the case and referred the entire matter back to FUNAI. Ducoco S.A. filed an application for the outright annulment of the administrative demarcation proceedings. Mrs. Germana Oliveira de Moraes, the judge, granted the application and suspended the land demarcation proceedings.

18. A procedural battle then began in various courts, involving FUNAI/the Federal Union and Ducoco S.A. Exercising their constitutional rights, the Tremembé have engaged a team of lawyers who are helping them and at the same time becoming aware of the realities of the Tremembé as an ethnic group.

19. FUNAI recently sought an expert opinion in the disputed area. The application was handled by Judge de Moraes, who appointed a civil engineer to give the opinion. The Tremembé have challenged that decision because the issue is essentially anthropological. The judge has now approached the Brazilian Association of Anthropology to obtain a list of anthropologists likely to provide an expert opinion. The other lawyers may also appoint an assistant expert.

20. The Tremembé thus continue to live beset by these various difficulties. They have on the one hand to organize themselves to cope with threats, persecution and aggression, but on the other hand they are working to promote their traditional activities (for example, handicrafts) and defend their rights.

SERVICES OF THE MIXE PEOPLE

[Original: Spanish]
[18 May 1994]

DECLARATION OF TLAHUITOLTEPEC ON THE FUNDAMENTAL RIGHTS OF THE INDIGENOUS NATIONS, NATIONALITIES AND PEOPLES OF INDO-LATIN AMERICA

Bearing in mind that we the indigenous nations, nationalities and peoples are natives of the territories which we have traditionally occupied, and that in most cases alien religion, education and legislation were imposed on us against our will,

Considering that Government States were established on top of our own political structures and governments and that we did not voluntarily accept their jurisdiction over us,

Reaffirming that the right of self-determination is a human right of peoples, as an absolute pre-requisite for the enjoyment of all the other internationally recognized human rights,

Bearing in mind that individual human rights are constantly violated in any nation State, and that history has shown them to be insufficient to safeguard the future of mankind,

Convinced that we human beings who inhabit this planet must promote legal recognition of the collective rights of all peoples, in a close relationship with nature as a whole and what it encompasses,

Reaffirming that the right of self-determination for our nations, nationalities, peoples and communities is systematically violated by the government States, thus preventing our economic, social, cultural, civil and political development,

Recognizing that considerable progress has been made with regard to the rights of our peoples within the framework of international law, and that despite this, many States have not in this respect ratified the instruments which concern them, or fail to comply with them internally despite what they proclaim to the world,

We the indigenous representatives assembled here at the Indo-Latin American Symposium, held in the Tlahuitoltepec community of the Mixe people from 27 to 31 October 1993, after a legal examination of the fundamental concepts of the rights of our indigenous nations, nationalities and peoples, have agreed, of our own free will, to proclaim the following declaration:

1. We the representatives of the indigenous Indo-Latin American nations, nationalities and peoples unanimously agree that we have always been and will forever continue to be peoples with our own history, religion, culture, education, language and other fundamental characteristics of nations, nationalities and peoples.

2. We reaffirm that our indigenous nations, nationalities and peoples have had and still have their own way of life, which is reflected in their political, legal, economic, social and cultural structures, and demands the recognition and respect of the nation States which, in law and in practice, have denied our existence.

3. The nation States must understand that the aspiration of our indigenous nations, nationalities and peoples is not to establish themselves as new States, but to be given the recognition and respect due to us as the first inhabitants of these lands and territories in which the nation States have established themselves, by virtue of the principle "first in time, first in law".

4. We the indigenous nations, nationalities and peoples reiterate that we eschew violence as a means of solving our problems. We reassert our capacity for dialogue as the proper and civilized way to settle the great differences between the nation States and our interests.

5. The nation States need to assume responsibility for creating a new legal, political, territorial, cultural and economic system not only to satisfy our aspirations but also to give their own existence legitimacy.

6. We therefore urge all the nation States to recognize their multiple composition, bearing in mind that indigenous nations, nationalities and peoples today included within the territory of the present States continue to exist as they have done for centuries.

7. We the indigenous nations, nationalities and peoples of Indo-Latin America are fully aware that we have held our lands and territories for centuries, and it is therefore urgently necessary in the interests of peaceful and respectful coexistence, that unequivocal and full legal recognition should be accorded to our rights.

8. Our territories and lands constitute our life, because within them lies the cradle of our age-old cultures, regulated by our own legal systems which proclaim our internal and external relationship with these territories and lands, reflected in our conduct as individuals and communities.

9. Our territories and lands are inalienable, imprescriptible and untakable, because it is so established in every one of our own legal systems, which derive from our cosmic view that they are an integral part of our indigenous nations, nationalities and peoples. This is so, because the Land like our Mother, cannot be turned into private property, since otherwise we could not guarantee the collective future of our peoples.

10. It is therefore imperative and urgent that the nation States should prevent and punish any action of genocide, ethnocide or the destruction of the environment, because in this way they will also safeguard the future of mankind. For this reason, we condemn the killing of our Ashánika and Yanomani brothers, and other acts, which prove that the invasion and murder of our peoples has not ended.

11. Respect for the right to self-determination is vital for the future development of our indigenous nations, nationalities and peoples. According to the international human rights covenants, this right is not the exclusive prerogative of governments but an inalienable right of all the peoples of the earth, without which they cannot fully exercise their other national and international rights.

12. In such difficult times as these, the highest priority must be given to recognizing the regional or local autonomies of our indigenous nations, nationalities and peoples when we deem fit to assume them as practical ways of exercising our self-determination, and in order to strengthen the unity of the present nation States through constitutional recognition and its effective application in each case.

13. We the indigenous nations, nationalities and peoples understand our cultures to be any manifestation that expresses the comprehensive concept of our relationship with our Mother Earth and our relationships among ourselves, as human beings in a community. Our cultures include elements such as language, social, political and economic customs, the arts, sciences, medicine and religion.

14. In view of the foregoing, we condemn any action or intent to undermine our culture as a whole or any element thereof and we reject any policy or activity which seeks to impose itself on any of them.

15. In order for our indigenous nations, nationalities and peoples to control and dispose freely of their lands, territories and natural resources, we ourselves must strengthen our legal systems, the fundamental principle of which is the search for harmony between human beings and nature. This means a new concept of law on the part of the nation States and the acceptance of legal pluralism.

16. We make a special appeal to the governments of the nation States to ratify ILO Convention 169 whenever the indigenous nations, nationalities and peoples so request. They should also support the adoption in the United Nations of the Universal Declaration on the Rights of Indigenous Peoples, without any restriction, since that instrument establishes the fundamental rights which safeguard our future.

17. In the Organization of American States, the Latin American States should actively encourage the adoption of an instrument which will guarantee the full exercise of the collective rights of our different nations, nationalities and peoples.

18. We confirm our proposal put forward on 18 June 1993 at the World Conference on Human Rights that the International Decade of the World's Indigenous People should be proclaimed with effect from 1994.

19. Similarly, we strongly urge Governments and the United Nations to appoint a High Commissioner for Human Rights, who will devote special attention to the collective rights of our indigenous nations, nationalities and peoples.

20. Finally, we are convinced that the future of Indo-Latin America will be better and more secure if there is a joint effort by the nation States and the indigenous nations, nationalities and peoples, to make dialogue and respect for equality through diversity the bases for settling problems and differences in order to achieve universal peace and the development of all.

Issued on 31 October 1993 in Tlahuitoltepec of the Mixe People, Oaxaca.

COMMITTEE TO SAVE THE KOLYMA RIVER BASIN
REPUBLIC OF SAKHA

[Original: Russian]
[18 April 1994]

Kolyma River Hydroelectric Scheme and the rights of the indigenous peoples of the Kolyma

1. Together with technological progress the twentieth century has brought environmental catastrophe to many peoples, including the peoples of the Russian North. The industrial conquest of the North has as its accompaniment a barbaric attitude towards the aboriginal peoples' environment.

2. Everyone has heard of the tragedies that have affected such major Siberian rivers as the Ob, the Yenisei and the Vilyui and the disaster this has turned out to be for the indigenous peoples.

3. The threat of similar environmental degradation, in the form of a scheme to build a series of hydroelectric stations, now looms over a major river in the north-east of Russia, the Kolyma.

4. The Kolyma is formed from the confluence of the rivers Kula and Ayan-Yurakh, which rise in the Khalkan Range of Russia's Magadan Region. It is 2,129 km long, drains an area of 643,000 km^2 and empties into the Kolyma Gulf of the East Siberian Sea.

5. The Kolyma flows through the Magadan Region and the Republic of Sakha (Yakutia) in the Russian Federation. It has been from time immemorial, and it still is a source of life for a number of indigenous peoples: the Evenks, Evens (or Lamuts), the Chukchi and the northern Yakuts. It is also the only home of the Yukagir people, a race that was, by Siberian standards, plentiful in the eighteenth century, but that is now vanishing.

6. The lower reaches of the Kolyma flow through three of the administrative regions in the Republic of Sakha (Yakutia): Upper Kolyma (area: 67,800 km^2; population: 10,147; aboriginal peoples: Yakuts, Evens, Yukagirs); Middle Kolyma (area: 125,200 km^2; population: 9,421; aboriginal peoples: Yakuts, Evens, Yukagirs) and Lower Kolyma (area: 87,100 km^2; population: 14,001; aboriginal peoples: Evens, Yukagirs, Chukchi, Yakuts).

7. In terms of the variety of its flora and fauna, the Kolyma is one of the world's richest rivers . It is home to 37 species of fish, including some highly prized edible varieties: sturgeon, Stenodus leucicthys nelma, Coregonus nasus, Coregonus muksun, etc. The Kolyma River basin supports 174 varieties of birds, including some that are extremely rare, such as the Arctic white crane (Grus leucogeranus), cuneate-tailed gull (Rhodestethia rosea) and northern swan, as well as numerous fur-bearing animals (Arctic fox, ermine, red fox, sable, etc.). The area along the Kolyma is rich in

domesticated and wild reindeer and elk. The native economy is based on reindeer- and horse-herding, cattle-farming, fishing, fur-trading and the gathering of the mushrooms, berries and other useful plants that grow on the banks of the river and the many lakes connected with it.

8. Building of the first hydroelectric station (HES) on the river, the Kolyma HES, began in 1973, without the knowledge of the people living in the area concerned; the Kolyma hydroelectric scheme as a whole, as planned by Kolyma Gesstroi (Kolyma Hydroconstruction) of the Magadan Region and the Ministry of Fuel and Energy of the Russian Federation, calls for the construction of a series of five stations to a design drawn up by the Lengidroproekt design institute of St. Petersburg in 1990-1993. Construction of the second stage of the scheme, the Ust-Srednekan HES, has begun, on a site in Magadan Region 217 km downstream from the Kolyma HES and 14 km upstream from the village of Ust-Srednekan, at kilometre 1,677 on the Kolyma River, 517 km from the administrative boundary of the Republic of Sakha (Yakutia). Work on the Ust-Srednekan HES is currently halted because of the public campaign to defend the Kolyma River basin.

9. The Ust-Srednekan HES is intended to reinforce the generating capacity of the Magadanenergo power authority for which it will be operated.

10. The principal economic activity in the area to be served by the Ust-Srednekan HES is the mining and concentration of gold, silver and tin ore. The station's intended installed capacity is 550 MW.

11. The adverse effect of the Kolyma hydroelectric scheme on the surrounding area is enormous even now, but when construction is complete and the planned industrial and other facilities are in operation the Kolyma and its environs could be totally ruined. That in turn would lead to the disappearance of the indigenous peoples, who have already been brought to the brink of ethnic disaster.

12. The expert studies that have been made to date do not fully encompass the negative effects of the scheme.

13. The environmental impact statement was drawn up by the Lengidroproekt design institute on the basis of research by the Magadan Environmental Centre and institutes of the Yakut Scientific Centre. The conclusions and views advanced are, inter alia, that the building of the Kolyma and Ust-Srednekan stations will reduce the catchment area of the Kolyma River in the vicinity of the town of Srednekolymsk by 17 and 27 per cent respectively. Proportional decreases are likely in maximum stream flow, so that the peak water level in wet years will be lowered by 60-70 cm with the construction of the Kolyma HES and by a further 100 cm with the construction of the Ust-Srednekan HES. In an averagely wet year the peak water level will be lowered by 1.5 m.

14. The ice-jam rate will be 55 per cent for the village of Zyryanka and 76 per cent for Srednekolymsk. The frequency of catastrophic water levels at Srednekolymsk when the river is in flood or there is pack ice will be greatly increased.

15. It is clear to even a casual observer that the pattern of flow levels in the river has changed considerably.

16. While water quality is stated and a list given of the main pollutants, there is no calculation of the pollution index or comparison with the maximum permissible concentrations.

17. Lengidroproekt calculates that the hydroelectric scheme will reduce the area of flood-plain inundated by 10.8 per cent, with lakes shrinking by 11.2 per cent, but data from the Institute for the Physical and Technical Problems of the North of the Siberian Branch of the Russian Academy of Sciences put the reduction at 50 per cent.

18. The adverse economic impact of the scheme is not fully assessed: there is no calculation of the damage that will be done to vegetation (trees, berry plants) or to the population, birds or agricultural land.

19. No prediction is made of the scheme's effect on the living conditions of the aboriginal population of the regions through which the river flows.

20. The scheme will have an adverse effect on the habitat of waterfowl and mammals and on the size of the invertebrate population.

21. Tremendous damage will be caused to the fishing industry in the Republic of Sakha (Yakutia). The precise magnitude of that damage is not defined.

22. Generally speaking, the environmental impact assessment made for the hydroelectric scheme fails to meet the requirements of the Provisional Instructions concerning the Procedure for Environmental Impact Assessment in Feasibility Studies and Design Work for Economic Facilities and Complexes approved by the Deputy Chairman of the USSR State Committee on Protection of the Environment on 10 May 1990.

23. The above are some of the findings of an expert commission of the State Environmental Assessment Directorate of the Ministry of the Environment and Natural Resources of the Republic of Sakha (Yakutia). They relate only to part of the scheme as designed by Lengidroproekt in 1990-1993.

24. No reliable information is yet available concerning the pollutants entering the Kolyma. Doctor's records, however, show that gastro-intestinal and kidney disorders are increasing among the permanent population.

25. Fishermen report that they are increasingly finding ulcerated fish: whitefish, dace and sometimes Coregonus nasus and other species. Channels connecting lakes to the Kolyma are drying up, so that water quality is falling and fish are dying in the lakes.

26. The artificial lowering of the water level and the releases of water from the reservoir of the existing HES have seriously disrupted fish spawning. This could eventually lead to the complete disappearance of some species.

27. Hunters say that the influence of the HES is seriously reducing the populations of fur-bearing animals, as well as of other wild and domesticated animals and small rodents. For example, the flooding caused by the release of water from the dam after the winter ice melts drowns fur-bearing animals such as muskrats, ermine, squirrels and small rodents and the total number of these creatures is gradually declining.

28. To date, public opinion in the three relevant regions of the Republic of Sakha (Yakutia) and in Magadan Region has been ignored, as have the demands for the halting of the hydroelectric scheme from the public Committee to Save the Kolyma River Basin.

29. The appeals that deputies for the Kolyma regions to the Supreme Council of the Republic of Sakha (Yakutia) made to the Russian President, Boris Yeltsin, and the former Prime Minister of Russia, Egor Gaidar, when they visited the Republic have gone unanswered.

30. The construction of the Kolyma hydroelectric scheme not only marks the beginning of the degradation of the environment in one of the most picturesque corners of the Earth but also threatens the future of the aboriginal peoples of the Kolyma: the Evens, Chukchi, Yukagirs and northern Yakuts, whose culture is an integral part of the circumpolar culture of the peoples of the Arctic.

31. The construction of the Kolyma hydroelectric scheme is a gross violation of the sovereignty of the Republic of Sakha (Yakutia) and breaches the right of the indigenous peoples, the Kolyma Evens, Yukagirs, Chukchi and Yakuts, to the possession and use of their ancestral territory, their right to maintain their own way of life. It may in time turn the aboriginal peoples of the Kolyma into environmental refugees and lead to ethnocide.

32. This is happening despite the legislation adopted by Russia, the Republic of Sakha (Yakutia) and the international community to protect the rights of indigenous peoples. In particular, it contravenes the Constitutions of the Russian Federation and the Republic of Sakha (Yakutia), the Decree of the President of the Russian Federation on Urgent Measures to Protect the Living Places and the Economic Activity of the Minority Peoples of the North (Decree No. 397, issued on 22 April 1992) and the Act of the Republic of Sakha (Yakutia) on the Nomadic, Tribal Community of the Minority Peoples of the North. It also violates the ILO Convention concerning Indigenous and Tribal Peoples (Convention No. 169, Geneva, 1989).

33. The Committee to Save the Kolyma River Basin appeals urgently to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights to include the present report in the study of the connection between environmental degradation and the rights of indigenous peoples.